

**TEGUH KEMAJUAN SDN BHD v. PENTADBIR TANAH, DAERAH
KOTA TINGGI & ANOR AND OTHER APPEALS**

COURT OF APPEAL, PUTRAJAYA
UMI KALTHUM ABDUL MAJID JCA
ZALEHA YUSOF JCA
YAACOB MD SAM JCA

[CIVIL APPEALS NO: J-01(A)-129-02-2018, J-01(A)-130-02-2018
& J-01(A)-131-02-2018]
30 NOVEMBER 2020

LAND LAW: *Acquisition of land – Compensation – Appeals against – Late payment charges – Whether discretionary – Whether applicant entitled to late payment charges – Applicable rate – Whether Land Administrator and Intervener had locus standi or right to appeal – Whether applicant precluded from appealing under s. 49(1) of Land Acquisition Act 1960*

At the High Court, Teguh Kemajuan Sdn Bhd ('applicant') had its Form N under the Land Acquisition Act 1960 ('Acquisition Act') referred to by the Land Administrator ('respondent') for determination as the applicant was aggrieved by the amount of compensation awarded by the respondent. The applicant was the owner of a piece of land ('scheduled land') which was compulsorily acquired under Perbadanan Setiausaha Kerajaan Johor ('intervener') who was the paymaster in the acquisition and had been allowed by the High Court to intervene. After hearing the parties, the High Court increased the award by RM8,564,459.88, namely from RM14,301,228 to RM22,865,687.88. The High Court also allowed interest of 8% per annum under s. 48 of the Acquisition Act on the increased amount (RM8,564,459.88) from the date of Form K. All the parties appealed separately against the decision of the Judicial Commissioner ('JC'). Except for the respondent, which appealed against the whole of the decision of the High Court, the applicant and the intervener only appealed against parts of the decision. The applicant was unhappy with the approach taken by the JC in the valuation of the land while the intervener was aggrieved with the decision of the JC to increase the award and the imposition of the 8% interest. The issues that arose were (i) whether the respondent had *locus standi* or the right to appeal from a judgment of the High Court in a land reference matter; (ii) whether the JC was correct in awarding the 8% interest under s. 48 of the Acquisition Act; and (iii) whether the applicant was precluded from appealing under the proviso to sub-s. 49(1) of the Acquisition Act.

Held (dismissing appellant's appeal; allowing respondent's and intervener's appeal)

Per Zaleha Yusof JCA delivering the judgment of the court:

- (1) On *locus standi*, sub-s. 49(1) of the Acquisition Act was very clear in that the Land Administrator was included as a party who could appeal. Hence, the respondent, as well as the intervener, had *locus standi* to appeal. (para 56)

- A (2) For the court to order the Land Administrator to pay the late payment charges depends on the circumstances of each case. The granting of interest is discretionary. On the award of 8% interest, the JC had erred in so doing as s. 48 of the Acquisition Act had already been amended when the award was made. Section 43 of the Land Acquisition (Amendment) Act 2016 did not save s. 48. The applicant was entitled to late payment charges but only at the new rate of 5% and not 8%. (paras 24, 27 & 56)
- B
- C (3) On whether the applicant was precluded from appealing under the proviso of sub-s. 49(1) of the Acquisition Act, this court found that the purported questions of law posed was actually an appeal on quantum awarded by the High Court. They were nothing more than an attempt to circumvent the provision of s. 49 of the Acquisition Act which precluded any party from appealing against the award of compensation. There were also no breaches of natural justice in regard to the conduct of the land reference proceedings by the JC as all parties had ample opportunity to present their case and they were duly considered by the JC as well as two assessors. Issue (iii) was therefore answered in the affirmative. (paras 52 & 56)
- D

Case(s) referred to:

- E *Chew Ming Teck v. Collector Of Land Revenue & Anor* [1988] 1 LNS 189 CA (*refd*)
Halaman Perdana Sdn Bhd v. Pentadbir Tanah Daerah Hulu Selangor [2016] 3 CLJ 370 CA (*refd*)
Heesom v. Public Services Ombudsman for Wales [2014] EWHC 1504 (*refd*)
Iun Chung Yang & Anor v. Superintendent Of Lands & Surveys, First Division, Sarawak [1979] 1 LNS 35 FC (*refd*)
- F *Mohd Shah Daud v. Pentadbir Tanah Dan Jajahan Kota Bharu* [2016] 6 CLJ 806 CA (*refd*)
Nanyang Manufacturing Co v. The Collector Of Land Revenue, Johore [1953] 1 LNS 59 HC (*refd*)
Ng Tiou Hong v. Collector Of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC (*refd*)
- G *Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v. Bertam Consolidated Rubber Co Ltd* [1990] 1 CLJ 707; [1990] 1 CLJ (Rep) 229 SC (*refd*)
Pentadbir Tanah Daerah Petaling v. Glenmarie Estate Ltd [1992] 1 CLJ 360; [1992] 1 CLJ (Rep) 272 SC (*refd*)
Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat And Another Case [2017] 5 CLJ 526 FC (*refd*)
- H *Sin Yee Estate Sdn Bhd v. Pentadbir Tanah Daerah Kinta* [2005] 4 CLJ 653 FC (*refd*)
Superintendent Of Lands And Surveys, Sarawak v. Aik Hoe & Co Ltd [1966] 1 LNS 188 FC (*refd*)

Legislation referred to:

- I Land Acquisition Act 1960, ss. 12, 48, 49(1), First Schedule para. 1(1A), Third Schedule paras. 3, 6
Land Acquisition (Amendment) Act 2016, s. 43
Land Acquisition Act [Sing], s. 25

(Civil Appeal No: J-01(A)-129-02-2018)

For the appellant - Yeo Yang Poh, Ian Pereira & Lee Cher Ling; M/s Lawrence Pereira & Partners

For the 1st respondent - Khoo Guan Huat & Tah Jui Wen; M/s Skrine

For the 2nd respondent - G Rajasingam & Nik Azila Shuhada; M/s Shearn Delamore & Co

(Civil Appeal No: J-01(A)-130-02-2018)

For the appellant - Khoo Guan Huat & Tan Hui Wen; M/s Skrine

For the 1st respondent - Yeo Yang Poh, Ian Pereira & Lee Cher Ling; M/s Lawrence Pereira & Partners

For the 2nd respondent - G Rajasingam & Nik Azila Shuhada; M/s Shearn Delamore & Co

(Civil Appeal No: J-01(A)-131-02-2018)

For the appellant - G Rajasingam & Nik Azila Shuhada; M/s Shearn Delamore & Co

For the 1st respondent - Yeo Yang Poh, Ian Pereira & Lee Cher Ling; M/s Lawrence Pereira & Partners

For the 2nd respondent - Khoo Guan Huat & Tan Hui Wen; M/s Skrine

[Editor's note: For the High Court judgment, please see *Teguh Kemajuan Sdn Bhd v. Pentadbir Tanah, Daerah Kota Tinggi; Perbadanan Setiausaha Kerajaan Johor (SSI) (Penceloh)* [2018] 1 LNS 376 (overruled in part).]

Reported by Suhainah Wahiduddin

JUDGMENT

Zaleha Yusof JCA:

[1] At the High Court at Johor Bahru, Teguh Kemajuan Sdn Bhd (“the applicant”) had its Form N under the Land Acquisition Act 1960 (“Act 486”) referred to by the Land Administrator (“the respondent”) for determination as the applicant was aggrieved with the amount of compensation awarded by the respondent on 7 December 2012. The applicant was the owner of a piece of land known as GRN 82359, No. Lot 1208, Mukim Pengerang, Daerah Kota Tinggi, Negeri Johor (“the scheduled land”) which was compulsorily acquired under Perbadanan Setiausaha Kerajaan Johor (“the intervener”) who was the paymaster in the acquisition and had been allowed by the High Court to intervene.

[2] The High Court on 7 January 2018, after hearing the parties, had increased the award by RM8,564,459.88, namely from RM14,301,228 to RM22,865,687.88. The High Court had also allowed interest of 8% per annum under s. 48 of the Act 486 on the increased amount (RM8,564,459.88) from the date of Form K namely from 23 April 2013.

[3] All the parties had now come before us to appeal separately against the decision of the learned High Court Judicial Commissioner (“JC”). We heard the three appeals together and after considering the submissions, we dismissed the applicant’s appeal and allowed the respondent’s and the intervener’s appeal, respectively; based on the issues raised and argued before us.

A [4] Our decision was unanimous and we shall now give our reasons. I have been tasked to take over writing of this grounds from our learned sister Justice Umi Kalthum Abdul Majid JCA who has now retired.

[5] In this judgment, for convenience, we shall continue to refer the parties as they were in the High Court.

B **The Appeals**

[6] The High Court had, *inter alia*, made the following orders:

- C
- (1) Nilai pasaran di bawah seksyen 2(a) Jadual Pertama Akta Pengambilan Tanah 1960 dinaikkan kepada RM103.26 smp;
 - (2) Award diberi untuk pertambahan nilai berjumlah RM8,564,459,88;
 - (3) Lain-lain award Pentadbir Tanah, Daerah Kota Tinggi, dikekalkan;
 - (4) Faedah 8% setahun, dari tarikh pengeluaran Borang 'K' (23.4.2013), ke atas jumlah pertambahan pampasan, tanpa kos;
 - D (5) Jumlah RM14,301,228.00 yang telah didepositkan ke Mahkamah dilepaskan dengan serta merta kepada Pemohon, bersama dengan faedah 2% setahun mulai dari tarikh jumlah itu didepositkan hingga pembayaran dibuat;
 - E (6) Deposit dikembalikan kepada Pemohon.

F [7] Except for the respondent, which appeals against the whole of the decisions of the High Court, the applicant and the intervener only appeal against parts of the decision of the High Court. Basically, the applicant was unhappy with the approach taken by the learned JC in the valuation of the land. While the intervener was aggrieved with the decision of the learned JC to increase the award and the imposition of 8% interest. However, as alluded to earlier, our decision was based on the issues raised and argued before us during the hearing of the appeals.

Issues

- G [8] Before us the parties argued on three issues:
- (i) *locus standi* of the respondent;
 - (ii) whether the learned JC was right in awarding the 8% interest under s. 48 of the Act 486; and
 - H (iii) whether the applicant is precluded from appealing under the proviso to sub-s. 49(1) of the Act 486.

Our Decision

Locus standi of the respondent

I [9] It was the applicant's submission that the respondent did not have the *locus* or the right to appeal from a judgment of the High Court in land reference matter. The reason being, when the respondent conducted an

enquiry under s. 12 of Act 486, he acted and decided in a quasi-judicial capacity akin to a tribunal or a court. He was an impartial arbiter, a decision maker who was not supposed to take side. Upon making his decision, the respondent was *functus officio*. He was a nominal party in the High Court and can be nominal party in an interested party's appeal. Learned counsel cited an English decision *Heesom v. Public Services Ombudsman for Wales* [2014] EWHC 1504 where it was *inter alia* held that in an appeal by a member of a relevant authority against a decision of a case tribunal of the adjudication panel for wales, the appropriate respondent was the ombudsman. The adjudication panel was a judicial or quasi-judicial body. It was *functus officio* in the appeal.

[10] Learned counsel for the applicant also equated the respondent with the Industrial Court.

[11] Learned counsel for the respondent on the other hand argued that sub-s. 49(1) of the Act 486 was clear as "Land Administrator" was included as a party who could appeal. Hence the case referred to by learned counsel for the applicant was distinguishable as it had no equivalent provision. He also referred to Singapore Court of Appeal in *Chew Ming Teck v. Collector of Land Revenue & Anor* [1988] 1 LNS 189; [1989] 1 MLJ 145 where it was held that the Collector of Land Revenue who made an award and apportioned the value of the appellant's interest in the land did have *locus standi* to appear before the Land Appeal Board in an appeal against apportionment as the collector had a right to defend the correctness of his apportionment. Also there was s. 25 of the Singapore Land Acquisition Act which allowed the collector to so doing.

[12] Learned counsel for the intervener supported learned counsel for the respondent's submission that sub-s. 49(1) of the Act 486 was absolutely clear and would also include his client.

[13] We had considered this issue and the submissions of the parties. Subsection 49(1) of the Act 486 reads as follows:

49(1). Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the Court to the Court of Appeal and to the Federal Court ...

[14] To us, the answer to issue raised was very straightforward. The provision of sub-s. 49(1) clearly provides the answer, without having to look at any case law. The position of the Land Administrator under Act 486 as far as *locus standi* in an appeal is concerned is unlike the Industrial Court as the Industrial Relations Act 1967 (Act 177) does not have a provision which allows the Chairman of the Industrial Court to appeal. Hence, it is distinguishable.

A [15] We therefore agreed with learned counsel for the respondent and learned counsel for the intervener that the respondent, as well as the intervener did have *locus standi* to appeal.

Whether The Learned JC Was Right In Awarding The 8% Interest Under Section 48 Of The Act 486

B [16] On this issue of interest, the decision of the learned JC can be found in para. 60 of His Lordship's grounds of judgment which reads as follows:

C 60. Lastly, the applicant has succeeded in its land reference proceedings, therefore, the applicant ought to entire [*sic*] to the interest claimed. The intervener's submission that the applicant ought not to be granted late interest charges is unsustainable.

D [17] Learned counsel for the respondent argued that the learned JC had erred as with effect from 1 December 2017, s. 48 of the Act 486 had been amended whereby the rate of interest was amended from 8% to 5%. The decision of the High Court was delivered on 7 January 2018, hence the new rate was applicable. (see Land Acquisition (Amendment) Act 2016 ("Act A1517")). Further, the saving provisions as found in s. 43 of the Act A1517 did not include s. 48 of the Act 486. Further, interest is not a procedural matter. Hence, it cannot be read retrospectively.

E [18] Learned counsel for the intervener adopted the above submission of learned counsel for the respondent. He further argued that the applicant was actually not entitled to the late payment charges at all as the applicant was guilty of delaying the land reference proceeding. The applicant had filed two judicial review ("JR") proceedings and had obtained continuous adjournment of the land reference matter until the disposal of his appeal in the JR at the Federal Court. Learned counsel found support in the Federal Court decision in *Sin Yee Estate Sdn Bhd v. Pentadbair Tanah Daerah Kinta* [2005] 4 CLJ 653 wherein the Federal Court had disallowed s. 48 of the Act 486 late payment charges because the court found that the delay was not the fault of the respondent ie, the Land Administrator in that case.

G [19] Learned counsel for the applicant on the other hand submitted that the factual situation herein was very different from the peculiar circumstances in *Sin Yee (supra)*. In *Sin Yee*, there was a special event namely the Court of Appeal was newly established, and there was a legal issue needed to be decided by the Federal Court; as to whether an appeal from a land reference lay directly to the Federal Court, or to the Court of Appeal. In *Sin Yee*, parties had to wait for that decision of the Federal Court. Learned counsel for the applicant submitted, there was no such special circumstances existed in this instance. He further cited the decision of this court in *Mohd Shah Daud v. Pentadbir Tanah Dan Jajahan Kota Bharu* [2016] 6 CLJ 806; [2016] 3 MLJ 566 wherein this court had, *inter alia*, held that it was wrong to deprive a claimant of the late payment charge simply on the ground that the claimant was seeking legal recourse.

[20] Further, learned counsel for the applicant contended that as the amendment did not operate retrospectively, the 5% interest could be ordered after 1 December 2017. He quoted the Supreme Court decision in *Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v. Bertam Consolidated Rubber Co Ltd* [1990] 1 CLJ 707; [1990] 1 CLJ (Rep) 229; [1990] 1 MLJ 268 wherein it was *inter alia* held that the new rate did not apply to the period before the new rate came into force.

[21] We had carefully perused the submissions of the parties on this issue. Section 48 of the Act 486, after the amendment reads as follows:

48. Land Administrator may be required to pay late payment charges

If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the Land Administrator to pay late payment charges on such excess at the rate of five per cent per annum from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the Court or to the person interested.

[22] What s. 48 provides is that when the High Court awards an increased amount of compensation, the High Court may order the Land Administrator to pay late payment charges on the increased amount at the rate of 5% per annum calculated from the date the Land Administrator took possession of the land until the date of payment of the increased amount. In the instant appeal, the increased amount was RM8,564,459.88.

[23] Before we embark on the discussion of the interest rate, let us first deal with the issue whether the applicant was entitled to the late payment charges.

[24] Before the amendment, s. 48 of the Act 486 rendered that the High Court may direct that the Land Administrator shall pay late payment charges on such excess award. However, with the amendment, the word shall had been substituted with the word "to". It would now read that the court may direct that the Land Administrator to pay late payment charges on such excess award. It was therefore our opinion that before the amendment, it was compulsory or mandatory for the Land Administrator to pay late payment charges, however the obligation now, post-amendment, had become only discretionary on the part of the Land Administrator whether to pay late payment charges or not. In our view, for the court to order the Land Administrator to pay the late payment charges or not, depends on the circumstances of each case. One of which was whether the Land Administrator was himself guilty of the delay as discussed in *Sin Yee (supra)*. The Federal Court in *Sin Yee*, had opined at p. 664 that unless there are special reasons to the contrary, interest ordinarily should be granted to the claimant under s. 48 of the Act 486 as a matter of course unless there are some special reasons for disallowing it. With due respect, that was the position then, pre-amendment. The word used in s. 48 then was "shall". Post-amendment, in our opinion, the granting of interest is now discretionary.

- A [25] However, combing through the records of appeal, we were not able to find any evidence to show that neither the respondent nor the intervener had ever objected to the postponement of the land reference matter in view of the JR when they themselves could have moved the court to proceed with the land reference. We therefore found no reason not to award late payment charges merely because the applicant had exercised its right to challenge the acquisition by way of JR.
- B

- C [26] On the question of which rate of interest was applicable, even the applicant had agreed that the amendment had prospective effect. We therefore agreed with learned counsel for the respondent and the intervener respectively that the learned JC had erred when His Lordship awarded interest at the rate of 8%. We were of the view that s. 48 of the Act 486 must be read with s. 43 of Act A1517. The said s. 43 reads as follows:

Saving and transitional

- D 43. All proceedings, actions or other matters required to be done under sections 3F and 28, sub-ss. 37(2) and (3) of the principal Act which are still pending or if already in progress, immediately before the coming into operation of this Act, shall be continued or concluded as if the principal Act had not been amended by this Act.
- E [27] Thus, clearly s. 43 did not save s. 48. We therefore ruled that the applicant in this instance was entitled to late payment charges but only at the rate of 5% and not 8% as ordered by the learned JC.

Whether The Applicant Is Precluded From Appealing Under The Proviso To Sub-s. 49(1) Of The Act 486

- F [28] The proviso to sub-s. 49(1) of the Act 486 reads as follows:
- Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

- G [29] Learned counsel for the applicant argued that the applicant's appeal revolved around questions of law. He referred to the decision of the Federal Court in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561, particularly at pp. 569 to 570 (CLJ); pp. 603-604 (MLJ), para. 148 which stated that the proviso to sub-s. 49(1) of the Act 486 must be strictly interpreted in favour of the person who has been deprived of its property so as to give meaning to the constitutional protection of a person's right to the property.
- H

- I [30] It was the applicant's contention that there were breaches of natural justice as the High Court had allowed fresh evidence adduced by the intervener during submission stage, thus precluding the applicant of its right to reply. The intervener had collated into a bundle 29 past awards by the similarly constituted land reference court in hearing 29 other land references under the same *Gazette* for the same acquisition. The applicant objected that

those awards were unreliable and were not put to their witnesses. The applicant had argued in the High Court that none of those 29 awards were concerned with land zoned as “commercial” like the scheduled land.

[31] The learned JC in para. 58 of its grounds of judgment had stated the following:

[58] This Court has also considered previous court decisions within the same vicinity, and the awards were within the range of RM80.00m² (see appendix ‘B’, p. 26-27). Those previously decided cases were zoned for residential, whereas, the scheduled land is zoned as commercial. Therefore, the Court is of the view that an adjustment for higher amount would be appropriate.

[32] From the reading of the paragraph as quoted above, it was clear to us that the learned JC had clearly accepted the applicant’s argument that none of those 29 awards were concerned with land zoned as commercial. In fact, the learned JC had used the past awards to make an upward adjustments in favour of the applicant and to arrive at a justification to increase the value at RM103.26 psm.

[33] The applicant’s objection was based on para. 6 of the Third Schedule to Act 486. However, we were of the view that this objection did not hold water as the 29 awards were not documents envisaged by the said para. 6. The awards were actually the decisions of the previous land reference court. It is settled law that the land reference court can consider previous awards in respect of the same acquisition. (See *Pentadbir Tanah Daerah Petaling v. Glenmarie Estate Ltd* [1992] 1 CLJ 360; [1992] 1 CLJ (Rep) 272; [1992] 1 MLJ 331).

[34] The applicant also complained that the High Court was wrong in rejecting its third rebuttal valuation report; when on the other hand the High Court accepted the intervener’s bundle containing the 29 awards. We had combed through the records of appeal and found at pp. 210 to 213, the Learned JC had correctly considered the arguments of the parties and agreed with the intervener that the third rebuttal report was filed late and contravened para. 3 of the Third Schedule to Act 486. Hence, we did not find any merit to this objection.

[35] Learned counsel for the applicant also averred that the learned JC had erred when His Lordship adopted a wrong basis of valuation; when His Lordship accepted “as is where is” basis valuation of the respondent instead of “highest and best use” valuation used by the applicant.

[36] “As it where is” is about what a land has or already is at a point in time; it is about its current condition or status whereas the “highest and best use” will require the maximum potential of the land to be fully taken into account; its highest use and its best use.

A [37] Learned counsel for the applicant argued that the scheduled land cannot be valued on “as is where is” basis as it has yet to be fully developed. The applicant had improved the development potential of the scheduled land. It had successfully procured zoning for the land, at first from open title to residential use and then to commercial use. Its planning application was
B however put on hold due to the intended acquisition.

[38] Learned counsel for the respondent as well as learned counsel for the intervener submitted that this averment on behalf of the applicant was totally ungrounded. Going through the grounds of judgment of the learned JC, we found His Lordship had indeed given consideration on this principle. We
C reproduce as follows:

[15] Based on the above information of the scheduled land, it is incumbent upon this Court to consider the valuation concept of “highest and best use”. The concept of “highest and best use” is explained in the MVS (4th Edition, at p. viii) as follows:

D Highest and best use is defined as the most probable use of a property which is physically possible, appropriately justified, legally permissible, financially, feasible, and which results in the highest value of the property being valued.

E [16] The applicant’s counsel urged this Court and the assessors to take into consideration that the highest and best use of the scheduled land ought to be or naturally for “mixed commercial development” because of its zoning.

F [17] Based on the title deed, the scheduled land was not restricted to any category of land use, and there was no condition or restriction. Since it was zoned under commercial, and considering the land size as well, a “mixed commercial development” would, in the opinion of this Court, be considered as the highest and best use that the scheduled land could develop. This Court observes that the plot ratio for the scheduled land was 1:3.5 for commercial development.

G [18] The applicant’s counsel also urged this Court and the assessors to consider the fact that the applicant had submitted an application for an integrated development on the scheduled land to the relevant authorities for approval of a mixed commercial development in 2011.

H [19] According to the applicant, it had received letters of no objection from the relevant departments and bodies in relation to its integrated development application. Hence, the Court must give emphasis to the potential value (or development value) of the scheduled land when determining its market value, the applicants counsel submitted.

I [20] However, this Court was not ready to weigh too much emphasis on the relevant departments’ and bodies’ approvals because no planning permission had in fact been granted by the local planning authority – Majlis Daerah Kota Tinggi.

[21] Section 22 of the Town and Country Planning Act 1976 stated clearly that the local planning authority is the ultimate body to grant the planning permission, and the response to the application for a planning permission could either be approved absolutely or subject to such conditions stipulated by the authority or that the application is refused. The letters of no objection from the relevant authorities could not be construed as a fact that the local planning authority has granted the planning permission of that the local planning authority will in principle be granting the planning permission.

A

B

[22] On the present facts, the application for planning permission to the local planning authority pursuant to s. 21 of the Town and Country Planning Act 1976 has yet to be submitted. Therefore, the 'potential value' of a mixed commercial development could not be considered.

C

[39] Hence, we found learned counsel for the applicant's complaint was without basis. Even the assessors had accepted and applied the "highest and best use" principle. See appendix B, paras. 8.2 to 8.3, pp. 67 to 68, records of appeal, volume 1, Appeal No: 5-01(A)-129-02/2018.

D

[40] Further, learned counsel for the applicant argued that the learned JC had erred in mistaking "locality" for "vicinity". He submitted that where there is no nearer land having sufficient similarities with the subject property, it is entirely proper for a valuer to use, as a comparable, a far away land which has sufficient similarities. He cited the Malaysian Valuation Standards 2015 ("MVS 2015"), s. 7.2.1.1(b) which reads as follows:

E

... The comparable properties must also be of similar properties. Valuers must rely on market evidences in the local market for all properties except, in the absence of such evidence, and where there is a national market for the property, the Valuer may rely on market evidences in the national market.

F

[41] Learned counsel also cited the Federal Court in *Iun Chung Yang & Anor v. Superintendent Of Lands & Surveys, First Division, Sarawak* [1979] 1 LNS 35; [1980] 2 MLJ 15 to support his argument.

G

[42] We were of the view that we must look at Act 486 in deciding on this issue. The relevant provision is found in para. 1(1A) to the First Schedule of the Act 486 which reads as follows:

In assessing the market value of any scheduled land, the valuer may use any suitable method of valuation to arrive at the market value provided that **regard may be had to the prices paid for the recent sales of lands with similar characteristics** as the scheduled land which are situated **within the vicinity of the scheduled land** and with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under subparagraph (1).

H

I

(emphasis added)

A [43] The paragraph *inter alia*, provides that regards may be had to the prices paid for the recent sales of lands with similar characteristics within the vicinity of scheduled land. We found the learned JC did just that when in paras. 23 and 24 of His Lordships' grounds of judgment he observed that the locality of the three comparison lands proposed by the applicant was at Puteri Harbour Johor Bahru which was too distant away from the scheduled land: the land sizes could not match with the scheduled land and they had no actual a frontage like the scheduled land. Hence, the learned JC accepted comparison three as proposed by the respondent's valuer was the best comparison because of the locality, the characteristics of the land which were very much similar to the scheduled land and the time of valuation was the most contemporaneous.

B [44] The Federal Court in *Ng Tiou Hong v. Collector Of Land Revenue, Gombak* [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 had *inter alia* held that in the determination of the market value, the safest guide is evidence of similar lands of similar quality or positions in the locality at or prior to the acquisition. (emphasis added)

C [45] In *Nanyang Manufacturing Co v. The Collector Of Land Revenue, Johore* [1953] 1 LNS 59; [1954] 1 MLJ 69, it was *inter alia* held that the safest guide to determine the fair market value was evidence of sales of the same land in the neighbourhood.

D [46] We could not see how s. 7.2.1.1.(b) of the MVS 2015 would support the applicant's argument. In fact the Federal Court's decision in *Iun Chung Yang (supra)*, had agreed with *Nanyang Manufacturing (supra)*, when at p. 14 of the case it stated that it agreed that the comparison method of taking recent bona fide sales of land in the vicinity possessing similar or near characteristics recommended in *Nanyang Manufacturing* was a fair method.

E [47] Based on para. 1(1A) to the First Schedule of the Act 486 and based on case laws, we were of the view that it is trite law that the lands being in different location cannot be used for purposes of comparison with the scheduled land. Thus, the learned JC did not err in making his decision on this.

F [48] The applicant's further complaint was that the learned JC, after concluded that the large land size of the scheduled land was an advantage, had agreed with the opinion of both assessors to reduce its value as much as -20%. This, learned counsel submitted, fell into errors pointed out by the Federal Court in *Semenyih Jaya (supra)*:

G [123] It is reiterated that the opinion of the assessors are not binding on the judge. In the event the assessors disagree ..., the judge may, after considering both opinions, elect to consider which of the two opinions in his view is appropriate ... However **he is not bound by either one of the opinions** (emphasis added)

[49] With due respect to learned counsel for the applicant we found that the learned JC had actually given his reason for doing so. In para. 44 of His Lordship's grounds of judgment, he stated as follows:

[44] Both assessors agreed that since the size of the scheduled land is much bigger than the land in comparison 3, therefore, an adjustment of -20% ought to be taken into account. This Court fully agrees that the adjustment is fair because such large piece of land has limited demand and only a small segment of buyers would be interested in a sizable land.

[50] His Lordships had explained that a large piece of land such as this has limited demand. The Federal Court in *Superintendent Of Lands And Surveys, Sarawak v. Aik Hoe & Co Ltd* [1966] 1 LNS 188; [1966] 1 MLJ 243 at p. 246 had stated:

Common experience has shown that in areas where there is a small population the price per unit of area for a large parcel is less than the price per unit of area for a small parcel. In *UP Government HS Gupta* AIR 1957 SC 202 the Supreme Court of India referred to the principle:

... if ... land has to be sold in one block consisting of a large area, the rate per square foot likely to be fetched would be smaller than if an equal extent of land is parcelled out into smaller bits and sold to different purchasers
(emphasis added)

[51] We therefore of the view that there was no merit on this complaint and that it is trite law that larger area of land held under a single title will fetch a lower market value compared to smaller parcels of land.

[52] There were other complaints by the applicant, such as the learned JC had undertaken an erroneous methodology of adjustment and ignored the principle of equivalence that the land owner must be compensated in an amount equivalent to, and sufficient for, what he would have to pay to purchase another piece of equivalent or comparable land at the relevant point in time; so as to restore him to his original position. With due respect, we were of the view that these were not questions of law but appeal on compensation which is barred by s. 49 of the Act 486. In fact, looking at the points raised in issue (iii), they were nothing more than an attempt to circumvent the provision of s. 49 of the Act 486 which precludes any party from appealing against the award of compensation.

[53] This court in *Halaman Perdana Sdn Bhd v. Pentadbir Tanah Daerah Hulu Selangor* [2016] 3 CLJ 370; [2016] 2 MLJ 252 found that:

... the allegations of "failure to appreciate development potential" and "unjustified preference of government's valuation" were merely attempts to circumvent the statutory bar to appeal from the High Court's award of compensation:

[29] The three main factors cited by counsel in establishing misdirections of law are:

- A (a) *Failure to appreciate development potential of the said land*
- Learned counsel contended that the learned judge had failed to appreciate that the category of land use of the said lands was bangunan thus assigning the said lands to a lower value per hectare. In addition, the learned judge also failed to consider that
- B the said Lands had been *approved* for the construction of luxury bungalows which would bring with in an increased market value.
- (b) *Unjustified preference of government's valuation*
- According to counsel there were material deficiencies in the government's valuation of the said Lands which would render the award granted by the
- C learned judge as unsafe and lead to a flawed calculation of the proper award of compensation to be paid to the applicant. For example:
- (i) The government's valuer had determined the market value of the said Lands based on a figure of only RM40.50 smp when the figures for the neighbouring lots were set at RM59.31 smp and RM58.15 smp which were the figures for agricultural land with potential;
- D
- (ii) Even then the government's valuer in determining the aforesaid figures of RM59.31 smp (as at 4 August 2000), RM58.15 smp (as at 30 January 1997) and RM49.43 smp (as at 15 June 1996) ought to have adjusted these figures so as to reflect the market value of these lands as at the date of acquisition which was on 23 December 2010; and
- E
- (iii) the government's valuer had reduced the market value of the said lands to RM405,000 per hectare and RM407,925 per hectare without any reasonable justification when two plots of comparable land PT 11042 and PT 11044 were valued at
- F RM69.90 smp and RM90.65 smp respectively.
- [30] *With respect, we are unable to see how these factors constitute misdirections of law or give rise to questions of law.*
- G [31] *These are all factors which affect the quantum or amount of compensation to be paid out to an affected person under the LAA.* That, in our view is not a legal issue nor does it raise any issue if law. The applicant's appeal revolves entirely around the amount of compensation awarded by the court in particular the assessment carried out by the court in arriving at the amount awarded. (emphasis added)
- H [54] We therefore agreed with learned counsel for the respective respondent and intervener that this appeal was a masked attempt to circumvent the salient provision of s. 49 of the Act 486 and therefore must be dismissed.
- I [55] On the role of assessors, even though it is true that the land reference judge is not bound by their opinion, the judge was still at liberty to agree or disagree with it. See *Semenyih Jaya (supra)*, paras. 41, 117 to 123.

Conclusion

A

[56] On this three issues raised before us, we summarised our answers as follows:

- (i) on *locus standi*, we were of the view that sub-s. 49(1) of the Act 486 was very clear in that the Land Administrator was included as a party who could appeal. Hence, he did have the *locus standi* to appeal in this appeal; B
- (ii) on the award of 8% interest, we were of the view that the learned JC had erred in so doing as s. 48 of the Act 486 had already been amended when the award was made. Section 43 of Act A1517 did not save the old provision of s. 48. Hence the appropriate rate should be the new rate of 5%; and C
- (iii) on whether the applicant was precluded from appealing under the proviso of sub-s. 49(1) of the Act 486, we found that purported questions of law posed was actually appeal on quantum awarded by the High Court. We also found no breaches of natural justice in regard to the conduct of the land reference proceedings by the learned JC as all parties had ample opportunity to present their case and they were duly considered by the learned JC as well as the two assessors. We therefore answered the issue (iii) in the affirmative. D

[57] Based on the issues and arguments raised before us, our unanimous decisions were as follows: E

- (i) J-01(A)-129-02-2018:
 - The appeal was dismissed with costs of RM10,000 for each set of the respondents; the deposit was refunded. F
- (ii) J-01(A)-130-02-2018:
 - The appeal was allowed with costs of RM5,000 to the appellant. The High Court order dated 7 January 2018 in respect of para. 4 is substituted with the interest at 5% per annum from the date of the issuance of Borang K on 23 April 2013 on the additional compensation to the date of payment of additional compensation. The deposit was refunded. G
- (iii) J-01(A)-131-02-2018:
 - The appeal was allowed with costs of RM5,000 to the appellant. The High Court order dated 7 January 2018 in respect of para. 4 is substituted with the interest at 5% per annum from the date of the issuance of Borang K on 23 April 2013 on the additional compensation to the date of payment of additional compensation. The deposit was refunded. H

I

We ordered accordingly.